



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 164-02
15 August 2002

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: MAJ [REDACTED] USMCR, [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Forms 149 dtd 12 Oct 01 and 5 Feb 02,
each w/attachment
(2) HQMC MMER memo dtd 3 Apr 02
(3) HQMC CMT memo dtd 9 May 02
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the fitness report for 1 January 1999 to 3 January 2000, a copy of which is at Tab A to enclosure (1). He further requested inserting fitness reports for 1 January to 8 April 1999 and 9 April 1999 to 3 January 2000 and an international evaluation for 23 April 1998 to 5 December 1999, copies of which are in enclosure (1) at Tabs B through D, respectively. As enclosure (2) reflects, after the Fiscal Year (FY) 2003 Reserve Lieutenant Colonel Selection Board had convened on 12 March 2002, the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) directed the requested corrections of Petitioner's performance record. He further specifically requested removal of his failure of selection before the FY 2002 Reserve Lieutenant Colonel Selection Board. The Board did not consider this request, as this relief had been granted in his prior case, docket number 5822-01. After he had submitted his application, he failed by the FY 2003 Reserve Lieutenant Colonel Selection Board. The Board presumes he desires removal of that failure, so as to be considered by the selection board that next convenes to consider officers of his category for promotion to the grade of lieutenant colonel as an officer who has not failed of selection to that grade. Finally, he requested consideration by a remedial promotion board.

2. The Board, consisting of Messrs. Kastner, Schultz and Zsalman, reviewed Petitioner's allegations of error and injustice on 8 August 2002, and pursuant to its regulations, determined that the limited corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. In correspondence attached as enclosure (3), the HQMC office having cognizance over the subject matter of Petitioner's request to remove his status as an officer who has failed of selection for promotion has commented to the effect that his request to remove "his failure of selection" has merit and warrants favorable action, without specifying which failure of selection is addressed. As the results of the FY 2003 Reserve Lieutenant Colonel Selection Board were not released until 28 June 2002, after this advisory opinion had been submitted, the opinion must pertain to Petitioner's failure by the FY 2002 Reserve Lieutenant Colonel Selection Board.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (3), the Board finds the existence of an injustice warranting limited relief, specifically, removal of Petitioner's failure of selection by the FY 2003 Reserve Lieutenant Colonel Selection Board.

In concluding that Petitioner's failure by the FY 2003 Reserve Lieutenant Colonel Selection Board should be removed, the Board particularly notes the advisory opinion, which recommended removing his failure by the FY 2002 Reserve Lieutenant Colonel Selection Board. They find this opinion equally applicable to the FY 2003 promotion board, as the PERB action was not directed until after that promotion board had convened.

The Board finds that Petitioner's request for consideration by a remedial promotion board should be denied. They find that his consideration by a regular promotion board, with a corrected performance record and status as not having failed of selection, will provide him adequate relief.

In view of the above, the Board directs the following limited corrective action.

RECOMMENDATION:

a. That Petitioner's record be corrected so that he will be considered by the earliest possible selection board convened to consider officers of his category for promotion to lieutenant colonel as an officer who has not failed of selection for promotion to that grade.

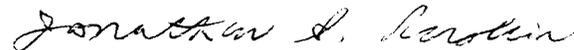
b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

d. That Petitioner's request for remedial consideration for promotion be denied.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

164-02

IN REPLY REFER TO:
1610
MMER
3 Apr 02

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: RECONSIDERATION IN THE CASE OF [REDACTED]
[REDACTED], USMCR

Ref: (a) [REDACTED]s DD Form 149 of 5 Feb 02

1. As requested, the Performance Evaluation Review Board (PERB) has reviewed the additional information presented by Major [REDACTED] in reference (a). With three members present, the Board met on 3 April 2002, and directed the following corrective action:

a. Removal of the currently filed fitness report for the period 990101 to 000103 (FD).

b. Insertion of the fitness report for the period 990101 to 990408 (TD), completed by [REDACTED] (enclosure (3) to reference (a)).

c. Insertion of the fitness report for the period 990409 to 000103 (FD), completed by [REDACTED] (enclosure (4) to reference (a)). NOTE: The original "from" date in Item 3b of this report was "990101." However, to maintain continuity and chronology in the "to TAD" and "from TAD" periods covered by the reports included as enclosures (3) and (4) to reference (a), the "from" date in Item 3b of this report has been modified to that which is currently shown (i.e., "990409").

d. Insertion of the International Evaluation Report for the period 980423 to 991205 (enclosure (5) to reference (a)).

[REDACTED]

Head, Performance Evaluation
Review Branch
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

164-02

IN REPLY REFER TO:
1070
CMT
9 May 02

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: RECONSIDERATION IN THE CASE OF MAJOR [REDACTED]
[REDACTED] CMCR

Ref: (a) MMER ltr 1610 MMER 3 Apr 02

1. As requested we have reviewed [REDACTED]'s record based on the actions directed in the reference. Based on the removal of the fitness report and the insertion of the reports noted in the reference, it appears as if [REDACTED] is slightly more competitive for promotion and a removal of the failure of selection is recommended.

a. The reports that have been inserted appear to be favorable based on the markings and the word picture that is painted. However, it must be noted that without relative values we have no basis from which to judge the overall competitiveness of the inserted reports.

b. Of the four new reports reflected in his Master Brief Sheet, two reports reflect a Reporting Senior relative value of 80% (lowest possible) and the remaining two have a relative value of 100% (highest possible). On the two reports with relative values of 80%, the Reviewing Officers (RO) rate 67 officers above him, 64 with and 18 below. On the two reports with relative values of 100%, the ROs rate 12 officers above him, one with and zero below. One of the reports is the sole report that the RO has reviewed.

c. On the old fitness reports, Major [REDACTED] has trends in the following areas: training personnel, attention to duty, initiative, judgment and economy of management. Additionally, when ranked against his peers, he is consistently ranked below a majority of them, with 20 marked above him, 11 with and 10 below.

2. The point of contact concerning this matter [REDACTED]
at [REDACTED]

[REDACTED]

By direction